

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

CC Docket #96-98
~~100,000 1130~~

In the Matter of)
)
Request by ALTS for Clarification)
for Clarification of the Commission's Rules) CCB/CPD 97-30
Regarding Reciprocal Compensation for)
Information Service Provider Traffic)
_____)

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

**COMMENTS OF GST TELECOM, INC.
IN SUPPORT OF THE ALTS
REQUEST FOR EXPEDITED CLARIFICATION OF
THE COMMISSION'S RULES
REGARDING RECIPROCAL COMPENSATION FOR
INFORMATION SERVICE PROVIDER TRAFFIC**

GST Telecom, Inc. ("GST"), by its attorneys, submits these comments in support of the above-captioned request filed on June 20, 1997 by the Association for Local Telecommunications ("ALTS").¹ GST, a wholly owned subsidiary of GST Telecommunications, Inc., is a diversified telecommunications company whose subsidiaries provide, among other services, competitive local exchange carrier ("CLEC") services in the Western and Southwestern regions of the United States.

I. ISP Traffic Clearly Should be Included in Reciprocal Compensation Arrangements

GST supports the ALTS request for the Commission to clarify, on an expedited basis, that CLECs should receive reciprocal compensation pursuant to section 251(b)(5) of the Telecommunications Act of 1996 ("Act") for the transport and termination of traffic to CLEC subscribers that are information service providers ("ISPs"). GST agrees with ALTS that the Commission should rule expeditiously that nothing in the Commission's Local Competition Order,

¹ FCC Public Notice DA 97-1399 (rel. July 2, 1997).

CC Docket No. 96-98 (adopted August 8, 1996) requires that calls to ISPs made from within a local calling area be treated any differently than other local traffic under current reciprocal compensation arrangements.

Some incumbent local exchange carriers ("ILECs") now seek to avoid their reciprocal compensation obligations to CLECs by taking the position that traffic terminated to ISPs really should be classified as "interexchange traffic," not subject to reciprocal compensation arrangements. GST respectively urges that the Commission clarify that such an interpretation seriously distorts the applicable Commission decisions and policies.

As the Commission knows, ISPs provide enhanced services by purchasing local business lines for customers to reach the ISP. The Commission's "Fact Sheet" entitled "The FCC, Internet Service Providers and Access Charges" in answering some of the "Frequently Asked Questions on Internet Services and Access Charges" (*see* http://www.fcc.gov/Bureaus/Common_Carrier/Factsheet/ispfact.html), includes, in part the following explanations:

ISPs are considered "enhanced service providers" under FCC rules . . . ISPs purchase local phone lines so that customers can call them. Under FCC rules, enhanced service providers ISPs are considered "end users" when they purchase services from local telephone companies . . . By contrast, long distance companies are considered "carriers," and they pay interstate access charges regulated by the FCC.

However, as ALTS has pointed out, some ILECs, by refusing to pay for ISP-related traffic under reciprocal compensation arrangements, have attempted to establish their own reciprocal compensation agreements by *post hoc* rationalizations. These unilateral actions of some ILECs violate the Act, the Commission's rules and policies, and the terms of negotiated reciprocal compensation agreements. In addition, such actions impede development of increased local

competition, and are contrary to the pro-competitive environment the Commission is attempting to foster through its decisions implementing the Act.

GST urges the Commission to make clear that calls made within local call areas to ISPs should be continued to be treated as local when an ILEC-to-CLEC hand-off is involved for the purposes of tariffs, separations and reciprocal compensation agreements. In addition the Commission should require that any calls that an ILEC treats as local in traffic exchanged with adjacent LECs be treated in the same way when such calls are exchanged with CLECs.

The Commission acknowledges in the Local Competition Order that “transport and termination of traffic, whether it originates locally or from a distant exchange, involves the same network function,” and explains that rates that local carriers impose both for transport and termination of local and long distance calls ultimately should converge. Local Competition Order ¶ 1033. However, in the Access Charge Order, the Commission carefully points to legal distinctions in the Act between long distance access services and transport and termination of local traffic in discussing how it reached the conclusion that the reciprocal compensation obligation does “not apply to the transport or termination of interstate or intrastate interexchange traffic.” Id. ¶ 1034. This conclusion, especially when read in the context of the discussion that precedes it in the Local Competition Order, clearly is referring to the fact that both interstate and intrastate traffic that is subject to access charges shall not be included in the reciprocal compensation calculations.

However, it does not logically follow, as some ILECs argue, that traffic delivered to ISPs should be excluded from reciprocal compensation to be paid among and between LECs. The Commission has decided in the Access Charge Reform Order (rel. May 15, 1997), following the precedent established in the 1983 Access Charge Reconsideration Order, that although ISPs may use

ILEC facilities for interstate purposes, ISPs should not be required to pay interexchange access charges. Access Charge Reform Order ¶¶ 341-345. The Commission, in its Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Dockets 96-262, 94-1, 91-213 and 96-263 (rel. December 24, 1996) tentatively concluded that ISPs should not be required to pay the current inefficient and non-cost-based interstate access charges. The Commission stated that "there is no reason to extend such a system to an additional class of customers, especially considering the potentially detrimental effects on the growth of the still-evolving information services industry." Access Charge Reform Order ¶ 343.

The ILECs are required, both by the Act and agreements in place with CLECs, to pay reciprocal compensation for transport and termination of traffic exchanged between the local networks. The Commission has instituted a rulemaking proceeding expressly for the purpose of considering issues related to ISP use of LEC networks, and that proceeding is the appropriate forum for ILECs to raise arguments about ISP traffic.

However, some ILECs, rather than paying the reciprocal compensation required by the Act and the terms of ILEC/CLEC agreements, are attempting to establish their own procedure--a "refusal to pay" procedure that perhaps could be called "refusal to pay and keep." If ILECs' are permitted to persist in this "refusal to pay and keep" approach, one possible result is no payments at all will be made by ILECs to CLECs for ISP-related traffic -- not a palatable or equitable result.

The Commission has already rejected the notion of access charges for ISP traffic, and is considering, through its established administrative procedures, comments regarding possible alternatives to the current approach. ILEC withholding of reciprocal compensation payments will

damage development of local competition, and the Commission should not permit such unilateral action by ILECs.

II. ILEC Refusal to Pay Not Supported by Law or Policy

The ILEC supposed basis for refusing to pay for ISP-related calling is their argument that such calls should be classified as "interexchange" in nature, despite the fact that such calls to the ISP are dialed using local exchange numbers, over local exchange business lines terminating at the ISP. Indeed it appears that ILECs treat ISP calls as local calls for billing purposes when both the customer and the ISP are ILEC customers. When a local exchange line is purchased from a LEC by the ISP, the Commission considers the ISP an end user, and the telephone call by the ISP customer originates within the local exchange and terminates at the ISP.

The ILEC position that it should be permitted to exclude specific categories of end-user traffic from reciprocal compensation if it believes further interexchange routing may occur is a dangerous, slippery path. The Commission should not permit ILECs to exclude local circuits from the calculation based upon what further routing may occur by non-carrier end user customers, absent specific rules developed after careful consideration of the relevant facts. The Commission is investigating what further Internet-related policies may be in the public interest. However, if an ILEC sells local service from local tariffs and calls that are placed over such service terminate at an end-user location, such traffic should be included in reciprocal compensation.

Southwestern/Pacific Bell's ("SoPac") General Manager-Competitive Analysis ("GM"), in her June 9, 1997 letter to Brooks Fiber (attached to the ALTS Petition) is typical of the flawed legal analysis offered in support of ILEC refusal to pay compensation for ISP-related traffic. The SoPac GM states that "It is the ultimate destination that must be used to jurisdictionalize a call" and, she

continues, citing “the *NARUC v. FCC* decision issued October 26, 1984 (746 F.2d 1492), that “the court found that even the use of facilities that are wholly within an exchange may be jurisdictionally interstate as a result of the traffic that uses them.”

GST does not dispute the *NARUC* holding that the Commission may assert jurisdiction over a physically intrastate facility if such facility carries interstate traffic. However, the SoPac discussion apparently assumes that the telephone call completed to the ISP, if the ISP performs further interstate routing to provide its enhanced services, should be a) “jurisdictionalized” as interstate if further routing occurs; and b) then excluded from reciprocal compensation paid by the ILEC to the CLEC.

However, it is not clear from SoPac’s letter whether it also consistently “jurisdictionalizes” the local exchange facilities it sells to ISPs as interstate for tariffs, rates and separations and other jurisdictional purposes, or whether it considers such calls placed over its own network as jurisdictionally interstate. It is not important for the Commission to decide the nature of the traffic carried over such facilities, when the Commission has previously determined that the ISP may purchase local facilities to use in providing both interstate and intrastate enhanced services. Presumably, SoPac classifies such calls in the intrastate jurisdiction for other purposes. However, it is not necessary to determine (even if such determination could be realistically made on a call by call basis) whether the ISP carries traffic to other sites that may or may not be within the local exchange, because a) the local call terminates at the ISP and b) the ISP is not a carrier, and thus the call should be considered terminated at the ISP end-user location.

The ILECs arguments about the jurisdictional nature of the call should be viewed by the Commission as part of their continuing arguments in support of imposing access charges, or similar

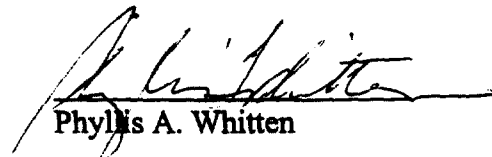
compensation arrangements, on calls placed to enhanced service providers. However, both Congress and the Commission have recognized the vital role that the growth and development of the Internet and other data services play in the lives of U.S. citizens, and therefore the Commission is separately considering the information service policy issues in other proceedings.

CONCLUSION

GST respectfully requests that Commission expeditiously clarify that all local calls, including calls terminated to ISPs, are subject to reciprocal compensation requirements.

Respectfully submitted,

GST TELECOM, INC.



Phyllis A. Whitten

Swidler & Berlin, Chartered
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
Phone: (202) 424-7618
Fax: (202) 424-7645

Date: July 17, 1997

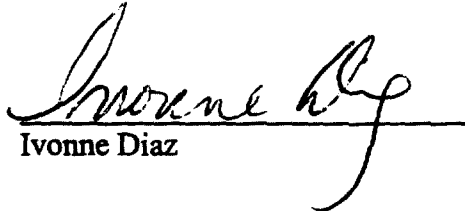
Attorney for GST Telecom, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July 1997, copies of "Comments of GST Telecom, Inc. in Support of the ALTS Request for Expedited Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic" were served by hand on the following:

Wanda Harris
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554

ITS, Inc.
1231 20th Street, N.W.
Washington, D.C. 20037


Ivonne Diaz